

DATED 19<sup>th</sup> April

2022

THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF RICHMOND UPON THAMES

AND

LINDEN HILL-CAPITAL HOMES-KUPG PROP LIMITED

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AGREEMENT UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING ACT  
1990 (AS AMENDED) RELATING TO  
672 HANWORTH ROAD, WHITTON, HOUNSLOW TW4 5NP

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Managing Director, South London Legal Partnership  
Gifford House,  
67c St Helier Avenue,  
Morden,  
SM4 6HY  
Reference VF217/2134

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THIS DEED is dated the 19<sup>th</sup> day of April 2022

## BETWEEN

### 1. PARTIES

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF RICHMOND** of Civic Centre, 44 York Street, Twickenham TW1 3BZ (the "**Council**"); and

(2) **LINDEN HILL-CAPITAL HOMES-KUPG PROP LIMITED** (Company Number 10848172) whose registered address 55 Grosvenor Street, Mayfair, London, England, W1K 3HY ("the "**Owner**")

### 2. BACKGROUND

- (A) The Council is the local planning authority and the local highway authority for the area within which the Land is located and by whom the obligations contained in this Agreement are enforceable.
- (B) The Owner is the freehold owner of the Land registered at HM Land Registry under title number TGL490113 and TGL 91830.
- (C) The Planning Application has been submitted to the Council for planning permission to carry out the Development in the manner set out in the plans, specifications and particulars forming part of the Planning Application.
- (D) At its meeting on 24<sup>th</sup> November 2021 the Council's Planning Committee resolved to grant consent for the Planning Application subject to the completion of this Agreement.
- (E) The parties have agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants hereinafter contained

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- (F) Policy LP45 of the Council's Local Plan provides that new development should be acceptable in terms of traffic generation and traffic impact minimising the impact of car based travel including its impact on the operation of the road network and local environment. Policy LP45 recognises there may be opportunities for car free developments subject to controls being secured to ensure new development does not contribute to on-street parking stress in the locality. Similar controls may also be required where existing levels of on-street parking are very high
- (G) Policy LP36 of the Council's Local Plan provides that the Council expects a contribution towards Affordable Housing from all housing sites, and on sites below the threshold of 'capable of ten or more units gross' a financial contribution to the affordable housing fund.

The parties agree as follows:

### 3 DEFINITIONS

3.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990;
<b>"1980 Act"</b>	means the Highways Act 1980;
<b>"Affordable Housing"</b>	means housing provided to persons whose needs are not met by the market and which housing should (a) meet the needs of purchasers and renters at a cost low enough for them to afford, determined with regard to local incomes and local housing prices, and (b) include provision for a housing unit to remain at an affordable price for future purchasers and renters unless an occupant purchases his or her interest in accordance with a statutory entitlement
<b>Affordable Housing Contribution</b>	the sum of £108,000 (One Hundred and Eight Thousand Pounds) Indexed to be used for affordable housing purposes in accordance with the Council's adopted affordable housing policies and plans.
<b>"Air Quality Contribution"</b>	means the sum of £12,000 (Twelve Thousand Pounds)

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	Indexed to be used by the Council towards air quality measures, including measures that are designed to raise awareness of air quality issues in the vicinity of the site.
<b>“Base Rate”</b>	means the Bank of England base rate set by the Monetary Policy Committee of the Bank of England from time to time;
<b>“Carbon Offset Contribution”</b>	means the sum of £36,195 (Thirty-six Thousand One Hundred and Ninety Five Pounds) Index Linked towards the Council's implementation of projects to reduce carbon emissions in its area towards carbon offset projects within the London Borough of Richmond Upon Thames
<b>“Carbon Offset Further Payment”</b>	Means a further financial contribution towards the Council's Carbon Offset Fund re-calculated in accordance with the London Plan in force as at the date of this Agreement and Schedule 2 of this Agreement, less the Carbon Offset Contribution such payment to be applied towards carbon offset projects within the London Borough of Richmond Upon Thames
<b>“Commencement of Development”</b>	means the earliest date upon which a material operation comprised in the Development is begun as defined by section 56(4) of the Act but for the purpose of this Deed excluding the following (a) archaeological works (b) site surveys including bore holes (c) site preparation including site clearance (d) environmental preparatory works (e) the erection of fencing to enclose the Development or any part of the Development (f) the laying out of temporary access roads for construction purposes (g) the erection of temporary site buildings for construction purposes (h) contamination tests (i) demolition works (j) ground investigations and any works of decontamination remediation (and <b>“Commence the Development”</b> <b>“Commencement”</b> and <b>“Commenced”</b> shall be construed accordingly);

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<b>“Commencement Date”</b>	the date on which Commencement occurs;
<b>“Community Use Management Plan”</b>	means an agreement to be entered between the applicant and the Council and such parties as are necessary to ensure that the community floorspace is provided, which would be submitted to and agreed by the Council and shall include the management of such facilities.
<b>“Construction Phase”</b>	from Commencement of Development to the Practical Completion Date.
<b>“CPZ”</b>	a controlled parking zone being a zone in which the parking of vehicles on the public highway is restricted or regulated by a traffic management order made by the Council under statutory powers or any controlled parking zone amending or replacing the same
<b>“Development”</b>	means the demolition of the existing structures and the erection on of two buildings, consisting of a retail unit and community centre at ground floor and 15 (fifteen) residential units above, parking and associated hard and soft landscaping
<b>“HDM”</b>	means the head of development management being the person the Council shall appoint for the time being (and from time to time) as Head of Department responsible for planning services and HDM shall be construed accordingly;
<b>“Highways Agreement”</b>	an agreement under section 278 of the 1980 Act and any other enabling powers to be entered into in relation to the Highways Works;
<b>“Highways Works”</b>	works in the existing publicly maintainable highway to be carried out by the Owner at its own cost to include but not be limited to:  (a) construction of a vehicular cross-over access on the northern side of Powder Mill Lane, and

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	<p>(b) construction of a service layby on the northern side of Powder Mill Lane west of the proposed access.</p> <p>(c) including all signage and lining to prevent illegal use of the dedicated service bay</p> <p>or as may otherwise be agreed with the Council;</p>
<b>“Index”</b>	means the All Items Group of the Retail Prices Index published by HM Government Office for National Statistics or (if such index shall cease to exist) the index which replaces the same or is the nearest equivalent thereto which shall be determined by the Council (acting reasonably) and “Indexed” shall be construed accordingly;
<b>“Index Linked”</b>	means increased (if applicable) in proportion to movement in the Index between the date of this Deed and the date the relevant contribution fee or other payment is required to be paid;
<b>“Land”</b>	means the freehold land known as 672 Hanworth Road, Whitton, Hounslow TW4 5NP registered at the Land Registry under title number TGL490113 and TGL 91830 and for the purpose of identification only shown edged with red on the plan annexed to this Deed;
<b>“Long Lease”</b>	means a long form of tenancy as defined in Section 186 and Schedule 10 of the Local Government and Housing Act 1989;
<b>“Market Units”</b>	Means the 15 (fifteen) Residential Units permitted by the Planning Permission.
<b>“Management Monitoring Fee”</b>	means the sum of £3,500 (Three Thousand Five Hundred Pounds) Index Linked;
<b>“Motor Vehicle”</b>	means any mechanically propelled vehicles intended or adapted for use on a road and/ or highway and the term <b>“Motor Vehicles”</b> shall be construed accordingly;
<b>“Occupy”</b>	means beneficially occupy for purposes permitted by the

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	Planning Permission but not including occupation by persons engaged in construction fitting out or decoration or occupation for advertising marketing or display purposes or occupation in relation to site security and management of the Land (and <b>“Occupies”</b> <b>“Occupiers”</b> <b>“Occupied”</b> and <b>“Occupation”</b> shall be construed accordingly);
<b>“Operational Phase”</b>	from Occupation for the lifetime of the Development;
<b>“Planning Application”</b>	means the planning application submitted to the Council and allocated reference 21/0156/FUL for planning permission for the Development;
<b>“Planning Permission”</b>	the planning permission granted by the Council pursuant to the Planning Application;
<b>“Practical Completion Date”</b>	the date upon which a certificate of practical completion is issued in respect of the Development;
<b>“Residential Occupier”</b>	any tenant or individual occupier or leasehold owner of a Residential Unit at the Property and for the avoidance of doubt the term <b>“Residential Occupiers”</b> :  (i) shall be construed accordingly; and  (ii) excludes any business or corporate body or bodies
<b>“Residents Parking Permit”</b>	a parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing for a Motor Vehicle to park in a Residents Parking Bay
<b>“Residents Parking Bay”</b>	a marked highway parking space designated by the Council by order under the Road Traffic Regulation Act 1984 the Road Traffic Regulations (Parking) Act 1986 the Parking Act 1989 or the Road Traffic Act 1991 (or other relevant legislation) for use by residents of the locality on which the Development is situated
<b>“Residential Unit(s)”</b>	the residential unit(s) designated for C3 use as defined within the Town & Country Planning (Use Classes) Order

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	1987 to be constructed pursuant to the Development together with any amenity space or any right to use the same (whether common or not with others therewith) and the term "Residential Unit" shall be construed accordingly
<b>"Section 73 Consent"</b>	means a planning permission granted pursuant to Section 73 of the 1990 Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the 1990 Act was granted;
<b>"Tree Replacement Contribution"</b>	Means the sum of £6,069.00 (Six Thousand and Sixty Nine Pounds) Index Linked payable by the Owner towards costs of removal of two trees and the provision of two replacement trees within the Council's administrative area;
<b>"Viability Report"</b>	means the report titled "Development Appraisal" dated 9 <sup>th</sup> June 2021 prepared by Savills on behalf of the Owner and submitted to the Council for review purposes;
<b>"Working Day"</b>	means any day (other than a Saturday, Sunday or public holiday) on which banks are open for domestic business in the City of London and <b>"Working Days"</b> shall be construed accordingly.

#### 4 INTERPRETATION

In this Agreement (except where the context otherwise requires):

- 4.1 References to the masculine feminine and neuter genders shall include all other genders.
- 4.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 4.3 Reference to natural persons includes corporations and vice versa.
- 4.4 The headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation.

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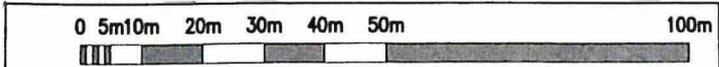
SIGNED:



WITNESSED:



All dimensions to be verified on site and the Architect informed of any discrepancy. All drawings and specifications should be read in conjunction with the Health and Safety Plan; all conflicts should be reported to the CDM Co-ordinator.  
This drawing is the copyright of Bowman Riley Architects Limited ©



**BOWMAN RILEY**  
ARCHITECTS

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SITE LOCATION PLAN

A	Issued for planning	12/08/19	SM	-
	revision	date	by	chk
	drawn by	checked by	date	scale @ A4
	AS	TP	06/06/18	1:1250
	project number	drawing number	revision	
	8129	(000) 200	A	

- 4.5 The expression the Owner is a reference to the Owner and shall include their successors in title and assigns (and persons claiming under and through them) and the expression the Council shall include a successor to its statutory functions.
- 4.6 A reference to a clause paragraph or schedule is a reference to a clause of or paragraph or schedule to this Agreement.
- 4.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to knowingly cause permit or suffer any infringement of such restriction.
- 4.8 Where in this Agreement a party includes more than one person any obligation of that party shall be joint and several.
- 4.9 A reference in this Agreement to any statute or to any section of a statute includes any statutory re-enactment or modification of it and a reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

## **5 STATUTORY AUTHORITY AND LEGAL EFFECT**

- 5.1 This Agreement is made pursuant to section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 Section 16 of the GLC (General Powers) Act 1974 and all other enabling powers on behalf of the Council.
- 5.2 The obligations of the Owner in this Agreement are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority.
- 5.3 Having regard to the provisions of regulation 122 of the Community Infrastructure Levy Regulations 2010 the Owner and the Council have agreed that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms are directly related to the Development and are fairly and reasonably related in scale and kind to the Development.

## **6 PLANNING OBLIGATIONS OF THE OWNER**

- 6.1 The Owner covenants with the Council that (subject to the provisions of clause 7) the provisions of this Agreement shall be enforceable without limit of time against the Owner's and their successors in title and assigns (including any person deriving title through or under them) interest in the Land or any part or parts of it as if the owner of the relevant interest had been an original covenanting party in respect of the interest or estate for the time being held by it.

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**7 RELEASES FROM THIS DEED**

7.1 No person shall be bound by any obligations or restrictions contained in this Agreement and/or be liable for any breach of a covenant and/or obligation contained in this Agreement:

7.1.1 after it shall have parted with its interest in the Land; and

7.1.2 in a case involving an obligation (not being the payment of a sum of money) which relates to a specific part of the Land after it shall have parted with its title to such specific part in circumstances where there are no other planning obligations or covenants remaining to be observed and performed by such party;

Provided That in either case such party shall remain liable for any subsisting breach of covenant which shall have arisen prior to it parting with such interest.

7.2 The obligations in this Agreement shall not be binding on:

7.2.1 any statutory undertakers who have an interest in the Property as a result of their statutory function; and

7.2.2 any mortgagee or charge of the whole or any part of the Land unless it takes possession of the Land in which case it will be bound by the obligations as a person deriving title from the Owner.

7.2.3 an owner or Occupier of a Residential Unit the retail unit and the community centre Provided Always that this exclusion shall not operate for the purpose of and an owner or occupier of a Residential Unit the retail unit and the community centre each of whom shall be bound by the Car Parking Restrictions obligation set out in Schedule 4 of this Agreement

**8 COVENANTS BY THE COUNCIL**

8.1 The Council covenants with the Owner to observe and perform the obligations and covenants on the part of the Council set out in this Agreement

**9 CONDITIONALITY**

9.1 With the exception of Clause 21 which shall come into effect on the grant of the Planning Permission the provisions of this Agreement and the Schedules to this Agreement shall come into effect on the grant of the Planning Permission and the Commencement of Development.

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**10 INDEXATION**

- 10.1 All contributions fees and other monies payable to the Council under this Agreement shall be Index Linked.

**11 INTEREST ON LATE PAYMENT**

- 11.1 The Owner shall pay interest at four per centum (4%) above the Base Rate on any contribution fees or other monies due under the provisions of this Agreement which have not been paid on the due date for payment such interest to be calculated over the period from the date the contribution fees or other monies should have been paid to the date the same shall be received by the Council.

**12 FURTHER PLANNING PERMISSIONS**

- 12.1 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop the Land (or any part thereof) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

**13 REASONABLENESS**

- 13.1 Where the approval satisfaction agreement confirmation or consent of the Council is required for any purpose under or in connection with the terms of this Agreement such approval satisfaction agreement confirmation or consent shall be applied for in writing and shall only be given in writing and shall not be unreasonably withheld or delayed.
- 13.2 Where requested the Council agrees to confirm in writing the status of discharge of the obligations in this Agreement.

**14 NO FETTER**

- 14.1 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any other act or any statutory instrument order or bylaw in the exercise of their functions as a local authority

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**15 NO WAIVER**

15.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in observing or performing any of the planning obligations and covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions of this Agreement or from acting upon any subsequent breach or default in respect thereof by the Owner.

**16 INVALIDITY AND SEVERANCE**

16.1 If a clause or sub-clause of this Agreement shall be deemed to be unenforceable or ultra vires the remainder of this Agreement shall remain in full force and effect provided severance from this Agreement is possible.

**17 TERMINATION**

17.1 This Agreement shall cease to have effect (insofar as it has not already been complied with) if:

17.1.1 the Planning Permission shall have lapsed prior to the date specified therein for the Commencement of Development without the Development having commenced;

17.1.2 the Planning Permission is revoked or modified by statutory procedure without the consent of the Owner; or

17.1.3 legal proceedings to challenge the Planning Permission have been brought and at the conclusion of such legal proceedings (including any appeals) the Planning Permission shall have been quashed or in the event of any re-determination of the Planning Application the application is refused planning permission.

**18 DISPUTE RESOLUTION**

18.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement the parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one representative from each party.

18.2 If the parties are unable to resolve the dispute amicably pursuant to clause 18.1 such dispute or difference shall be referred to some independent and fit person of at least

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ten years professional experience of the matter in issue holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and his decision shall save in the case of manifest material error be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares

- 18.3 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to clause 18.2 of this clause or as to the appropriate professional body within fourteen days after either party has given to the other written request to concur in the professional qualifications of the person to be appointed pursuant to clause 18.2 hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the president for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares
- 18.4 It shall be a term of the appointment of any independent expert appointed pursuant to this clause 18 that a timetable shall be fixed at the outset for resolution of the dispute.
- 18.5 Any independent expert appointed pursuant to this clause 18 shall act as an independent expert and not an arbitrator.

## 19 **FURTHER SECTION 73 PLANNING PERMISSION**

- 19.1 In the event of a Section 73 Consent the covenants or provisions of this Agreement shall be deemed to bind the varied planning permission and to apply in equal terms to the new planning permission unless the Council in determination of the application for the new planning permission indicates that consequential amendments are required to this Agreement to reflect the terms of the application for the Section 73 Consent, when a separate Agreement under sections 106 and 106A of the 1990 Act

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will be required to secure relevant planning obligations relating to the Section 73 Consent.

**20 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

20.1 Nothing contained in this Agreement shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and the Owner and its successors in title (if any) and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Agreement.

**21 LEGAL COSTS AND MANAGEMENT MONITORING FEE**

21.1 The Owner agrees to pay to the Council on the signing of this Agreement the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Agreement in the sum of £3,200 and the Management Monitoring Fee.

**22 VAT**

22.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.

22.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of the supply the person making the supply shall have the right to issue an invoice to the person to whom the supply was made and VAT shall be paid accordingly.

**23 NOTICES**

23.1 Any notice to be given under this Agreement must be in writing (which for the purpose of this Agreement excludes facsimile and email) and be delivered by hand or sent by pre-paid first class post or other next working day delivery service.

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23.2 Any notice or other communication to be given by any party under this Agreement must:

23.2.1 be delivered by hand; or

23.2.2 sent by prepaid first class post or other next working day delivery service.

23.3. Any notice or other communication to be given by any party under this Agreement must:

23.3.1 in the case of a notice to be given to the Council be served on the Council at its address aforesaid marked for the attention of the HDM; and

23.3.2 in the case of a notice to be given to the Owner be served on the Owner at their address aforesaid marked for the attention and a copy sent to Haroun Al-Mishwit or such other address for service as any party may previously have notified by notice in writing to the other parties.

23.4 Any notice given in accordance with the preceding provisions of this clause will be deemed to have been received:

23.4.1 if delivered by hand on signature of a delivery receipt or at the time the notice or document is left at the correct address Provided Always That if delivery occurs after 5pm on a Working Day such notice will be deemed to have been received on the next Working Day; and

23.4.2 if sent by pre-paid first class post or other next day working delivery service, on the second Working Day after posting.

23.5 The provisions of this clause 23 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 24 LOCAL LAND CHARGE

24.1 This Agreement shall be registered by the Council as a local land charge.

## 25 JURISDICTION

25.1 This Agreement shall be governed and interpreted in accordance with the laws of England.

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**IN WITNESS** whereof the Owner and the Council have duly executed this Agreement as a **DEED** the day and year first before written

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## SCHEDULE 1

### Entry and Notification of the Commencement of Development

The Owner covenants with the Council as follows:

- 1 to permit the HDM and any person or persons authorised by him reasonable access to the Land or any part of it at all reasonable times on reasonable notice and in compliance with the Owner's reasonable requirements to permit him or them to inspect the Development for the purpose only of securing compliance with the terms of this Agreement.
- 2 to give to the HDM notice in writing, no later than seven Working Days prior to the anticipated Commencement of Development of the date of the anticipated Commencement of Development.
- 3 to give to the HDM notice in writing of:
  - 3.1 the Commencement of Development no later than ten Working Days following the occurrence of the same.
  - 3.2 first Occupation no later than ten Working Days prior to the first Occupation of the Development

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**SCHEDULE 2**  
**Carbon Offset Payment**

The Owner covenants with the Council as follows:

1. Prior to or upon the Practical Completion Date, to submit to the Council for its written approval (such approval not to be unreasonably withheld or delayed) a revised energy strategy report setting out the calculation of the Carbon Offset Further Payment.
2. Within 30 (thirty) Working Days of receiving the Owner's revised energy strategy report under paragraph 1 ("the Review Period"), the Council shall notify the Owner in writing whether or not it agrees with the calculation of the Carbon Offset Further Payment (as contained in the revised energy strategy report). Any dispute in respect of the calculation of the Carbon Offset Further Payment shall be referred for determination by an expert in accordance with clause 18.
3. To pay the Carbon Offset Further Payment within 30 (thirty) Working Days following receipt of written confirmation of the agreed amount in accordance with paragraph 2 above.
4. Not to Occupy nor cause nor permit Occupation of the Development until the Carbon Offset Further Payment has been paid to the Council.

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**SCHEDULE 3**  
**Highways Works**

The Owner covenants with the Council as follows:

1. To enter into a Highways Agreement in respect of the Highways Works prior to Occupation of Development or as may be otherwise agreed with the Council.
2. Not to Occupy nor cause nor permit Occupation of any part of the Development until such time as the Highways Works have been completed to the satisfaction of the Council (acting reasonably) as evidenced by the issue of a certificate of practical completion by the local highway authority in accordance with the Highways Agreement.

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## SCHEUDLE 4

### Car Parking Restrictions

The Owner covenants with the Council that in the event that a CPZ is established in the future not to dispose of to any person or Occupy or allow any person to be the Residential Occupier unless a notice has been served on such person that pursuant to the Council's policy to which reference is made in recital (F) hereof or any other policy replacing the same such person shall not be entitled (unless such person is or becomes entitled to be a holder of a *Disabled Persons' Badge*) to be granted a Residents Parking Permit to park a Motor Vehicle in any Residents Parking Bay or other place within the CPZ nor will the Council enter into a contract (other than individual contracts for one occasion) with such person to park in any car park controlled by the Council

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## SCHEDULE 5

### Financial Contributions

The Owner covenants with the Council to:

1. pay the Tree Replacement Contribution to the Council prior to the Commencement of Development; and
2. to pay the Air Quality Contribution to the Council prior to Occupation of Development; and
3. to pay the Carbon Offset Contribution to the Council prior to Occupation of Development,
3. to pay the Affordable Housing Contribution to the Council prior to the Commencement of the Development .

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## SCHEDULE 6

### Community Use Management Plan

- 1 Prior to first Occupation of the Development, the Owner shall submit to the Council for its approval the Community Use Management Plan such approval not to be unreasonably withheld or delayed.
- 2 The Owner shall implement the approved Community Use Management Plan pursuant to paragraph 1 above for the lifetime of the Development subject to such changes as may be agreed with the Council acting reasonably.as the same may have been varied from time to time with the prior written approved of the Council.
- 3 Unless otherwise agreed, the Owner shall at its own expense and in accordance with the approved Community Use Management Plan retain and make the same available for free access (managed in accordance with the Community Use Management Plan) to all for the life of the Development
- 4 The approved Community Use Management Plan may be reviewed and amended at the request of or pursuant to any written agreement with the Council in accordance with the provisions of the Community Use Management Plan.

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## SCHEDULE 7

### Submission of Viability Review and Use of Surplus Profit

In this Schedule (and where they are used elsewhere in this Agreement), the following expressions shall have the following meanings:

<b>“Additional Affordable Housing Units”</b>	<p>means the number of additional London Affordable Rental Units and/or the number of additional Shared Ownership Units to be provided (where the First Review identifies a First Review Surplus) to be determined in accordance with the following formulae:</p> <p><math>X = \text{additional London Affordable Rental Housing requirement (habitable rooms)}</math></p> <p><math>X = ((E \times F) \div (A - B)) \div D</math></p> <p>And</p> <p><math>Y = \text{additional Shared Ownership Housing requirement (habitable rooms)}</math></p> <p><math>Y = ((E \times G) \div (A - C)) \div D</math></p> <p>Where:</p> <p>A = average value of market housing per m<sup>2</sup> (£)</p> <p>B = average value of London Affordable Rental Housing per m<sup>2</sup> (£)</p> <p>C = average value of Shared Ownership Housing per m<sup>2</sup> (£)</p> <p>D = average habitable room size for the Development (m<sup>2</sup>)</p> <p>E = First Review Surplus</p> <p>F = percentage of the First Review Surplus available for additional affordable housing to be used for London Affordable Rental Housing (70%)</p> <p>G = percentage of the First Review Surplus available for additional affordable housing to be used for Shared Ownership Housing (30%)</p> <p>Provided Always that if either “X” or “Y” is less than three then the First Review Surplus shall be paid to the Council as an Affordable Housing contribution</p>
<b>“Additional Affordable Housing Units Scheme”</b>	<p>means a scheme to be prepared by the Owner and submitted to the Council detailing:</p> <ol style="list-style-type: none"> <li>1 the location of the Additional Affordable Housing Units to be provided on the Land (being Market</li> </ol>

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	<p>Units which are to be converted into Additional Affordable Housing Units);</p> <ol style="list-style-type: none"> <li>2 the timescale for the provision of the Additional Affordable Housing Units; and</li> <li>3 arrangements for the transfer or grant of a Long Lease of the Additional Affordable Housing Units to a Registered Provider.</li> </ol>
<b>“Affordable Housing Cap”</b>	<p>means such sum as shall be calculated by applying the following formula:</p> <p>A – B less any payments made to date under the terms of the Agreement</p> <p>where A equals the Residual Land Value as permitted by the Planning Permission but subject to the provisions of this Agreement (other than this Schedule)</p> <p>and B equals the Residual Land Value of the Planning Permission on the assumption that the same is developed as a Compliant Affordable Housing Scheme</p>
<b>Affordable Housing Contribution</b>	<p>means the Surplus arising from the First Review and 60% of the Surplus determined on the Second Review Provided Always that such sum shall not exceed the Affordable Housing Cap</p>
<b>Base Build Costs</b>	<p>means £3,958,000 being the estimated cost of demolition construction external works and assumed contingency allowance in respect of the Development as set out on page 5 of the Viability Report</p>
<b>Base GDV</b>	<p>means the sum of £6,940,000 being the estimated gross development value of the Development as set out in the Viability Report</p>
<b>“Calculations”</b>	<p>means calculations (on an open book basis):</p> <ol style="list-style-type: none"> <li>1. of the Viability Assessment;</li> <li>2. (on the First Review where there is a First Review Surplus) to determine the Additional Affordable Housing Units Scheme and</li> <li>3. (on the Second Review where there is a Second Review Surplus) to determine the Affordable Housing Contribution</li> </ol> <p>in each case with evidence in support of the same</p>
<b>“Compliant Affordable Housing Scheme”</b>	<p>means a scheme where the Additional Affordable Housing Units are comprised of 80% London Affordable Rental Housing and 20% Shared Ownership Housing</p>

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<b>First Review</b>	the preparation submission and agreement (or other determination) of the Calculations on and following the First Review Date
<b>First Review Agreement Date</b>	the date of the agreement (or other determination) of the Calculations in respect of the First Review
<b>First Review Date</b>	the date two (2) years after the grant of the Planning Permission (subject to the provisions of paragraph 1 of this Schedule)
<b>Force Majeure</b>	means an order or national directive from the Government due to the outbreak of Covid-19 which necessitates the suspension of the Development.
<b>Market Housing</b>	means housing for sale or letting in the open market to members of the general public free of any restriction (including any restriction to use as Affordable Housing)
<b>Open Market Value</b>	<p>means the best price which the Sale of an interest in property would have been completed unconditionally for a cash consideration on the date of valuation assuming:</p> <ol style="list-style-type: none"> <li>1. a willing seller;</li> <li>2. that prior to the date of valuation there had been a reasonable period (having regard to the nature of the property and state of the market) for the proper marketing of the interest in the property, for the agreement of the price and for negotiation of terms for the completion of the sale;</li> <li>3. that no account is taken of any additional bid by a prospective purchaser with a special interest; and</li> <li>4. that both parties to the transaction had acted knowledgeably prudently and without compulsion</li> </ol> <p>and having regard to the "RICS Valuation – Professional Standards UK" published by the RICS at the date of valuation</p>
<b>Residual Land Value</b>	the residual value of the development scheme calculated through a residual appraisal once the costs of development of the project including a blended developer profit of 19.1% on GDV for the residential element and 15% on GDV for the commercial element as referenced on page 6 of the Viability Report and agreed appraisals are deducted from the Review GDV with the format and input headings to follow in accordance with the Viability Report.

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**Review Build Costs**

means an updated build cost to be calculated and presented on a like for like basis using the same methodology and cost headings as those contained in the Base Build Costs and in the case of the First Review shall comprise the aggregate of:

1. the actual cost of demolition construction and external works incurred in respect of the Development; and
2. (where actual costs have not been incurred) the estimated cost of demolition construction external works and a reasonable contingency allowance in respect of the remainder of the Development

at the First Review Date

Provided Always That for the avoidance of doubt such actual and estimated costs shall exclude:

- i. the costs of securing the Planning Permission;
- ii. professional finance, legal, insurance, bond, finance and marketing and agents fees and costs;
- iii. all internal costs of the Owner including but not limited to project and development management costs fees overheads and administration expenses (other than those costs falling under the heading of 'Overheads' in the Costs Plan); and
- iv. any costs arising under a contract or arrangement the purpose or effect of which is to artificially increase any of the costs referred to above

And in the case of the Second Review shall comprise the aggregate of:

1. the actual cost of demolition construction and external works incurred in respect of the Development; and
2. (where actual costs have not been incurred) the estimated cost of demolition construction and external works in respect of the remainder of the Development

at the Second Review Date

Provided Always That for the avoidance of doubt such

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	<p>actual and estimated costs shall exclude:</p> <ol style="list-style-type: none"> <li>i. the costs of securing the Planning Permission;</li> <li>ii. professional finance legal insurance bond marketing and agents fees and costs;</li> <li>iii. all internal costs of the Owner including but not limited to project and development management costs fees overheads and administration expenses (other than those costs falling under the heading of 'Overheads' in the Costs Plan) and</li> <li>iv. any costs arising under a contract or arrangement the purpose or effect of which is to artificially increase any of the costs referred to above.</li> </ol>
<p><b>Review Date</b></p>	<p>means the First Review Date or the Second Review Date as the case may be (and "Review Dates" shall be construed accordingly)</p>
<p><b>Review GDV</b></p>	<p>Means the aggregate of:</p> <ol style="list-style-type: none"> <li>1. the consideration paid on the Sale of all Market Units;</li> <li>2. in the case of any Market Units which have not been disposed of by way of Sale the estimated Open Market Value of the same on the assumption of a Sale of such Market Units;</li> <li>3. in the case of any Market Units which have not been the subject of a freehold Sale the estimated Open Market Value of the freehold interest in all such Market Units on the assumption of a Sale of the freehold interest in the same;</li> <li>4. the consideration paid on the sale of the Affordable Housing Units to a Registered Provider;</li> <li>5. in the case of any Affordable Housing Units which have not been disposed of by way of Sale to a Registered Provider the estimated market value of the same on the assumption of a sale of such Affordable Housing Units to a Registered Provider;</li> <li>6. in the case of any Affordable Housing Units which</li> </ol>

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	<p>have not been the subject of a freehold sale the estimated Open Market Value of the freehold interest in such Affordable Housing Units on the assumption of a sale of the freehold interest in the same;</p> <p>7. the consideration paid on the Sale of all commercial units;</p> <p>8. in the case of any commercial units which have not been disposed of by way of Sale the estimated Open Market Value of the same on the assumption of a Sale of such commercial units;</p> <p>9. in the case of any commercial units which have not been the subject of a freehold sale the estimated Open Market Value of the freehold interest in all such commercial units on the assumption of a sale of the freehold interest in the same;</p> <p>10. all rental income licence fees and other income and consideration received from the use and/or Occupation of the Land (or any part thereof) after the date of the Planning Permission up to the date of the receipt of the proceeds of any Sale of any such part or the relevant Review Date (whichever is the earlier) including in respect of:</p> <ul style="list-style-type: none"> <li>a. the existing buildings and structures situate on the Land;</li> <li>b. that part of the Land not covered by existing buildings or structures;</li> <li>c. the Market Units and Affordable Housing Units constructed on the Land;</li> <li>d. that part of the Land upon which the Development shall be constructed which is not covered by buildings and structures.</li> </ul>
<b>Sale</b>	<p>means the sale of a freehold interest (including an exchange of contracts for such sale) or the grant of a long lease (including an exchange of contracts for the grant of such long lease) in consideration of the payment of a premium and with no unusually onerous covenants</p>

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	and conditions
<b>Second Review</b>	means the preparation submission and agreement of the Calculations on and following the Second Review Date
<b>Second Review Agreement Date</b>	means the date of the agreement (or other determination) of the Calculations in respect of the Second Review
<b>Second Review Date</b>	means the date of the Sale or Occupation (whichever is the earlier) of the eleventh (11) Residential Unit
<b>First Review Surplus</b>	<p>means such sum as shall be determined by applying the following formulae:</p> <p>In the case of the First Review:</p> <p><b>FORMULA 1A (Surplus profit available for additional on-site affordable housing)</b></p> <p>"Surplus profit" = ((A – B) – (D – E)) – P - £851,914</p> <p><b>Where:</b></p> <p>A = Estimated GDV (£)</p> <p>B = <math>A \div (C + 1)</math></p> <p>C = Percentage change in value for the private residential component of the development from grant of Planning Permission to the First Review Date (using Land Registry House Price Index for new build properties for the London Borough of Richmond upon Thames)) (%)</p> <p>D = Estimated Build Costs (£)</p> <p>E = <math>D \div (F + 1)</math></p> <p>F = Percentage change in the BCIS All in Tender Index ("BCIS TPI") from grant of Planning Permission to the First Review Date (using the latest index figures publicly available) (%)</p> <p>Calculated by (BCIS TPI at review – BCIS TPI at grant of permission) divided by BCIS TPI at grant of permission as a percentage.</p> <p>Example – If BCIS TPI is 345 at date of review and TPI was 275 at date of permission, <math>F = 345 - 275 = 70</math>; <math>70 / 275 = 25.45\%</math></p> <p>P = (A – B) x Y Owner's profit on change in GDV of private residential component (£)</p>

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Y = 19.1% Owner's profit as a percentage of GDV for the private residential component as determined as part of the review (%)

**Notes:**

B is the assumed application stage GDV for private residential component at the date of planning permission (£)

E is the assumed application stage build costs for the private residential component at the date of planning permission (£)

(A – B) represents change in GDV of the private residential component of development from the date of planning permission to the date of review (£)

(D – E) represents the change in build costs for the private residential component from the date of planning permission to the date of review (£)

**FORMULA 2 (Additional Affordable Housing)**

X = Additional London Affordable Rented Housing requirement (Habitable Rooms)

$$X = ((E * F) \div (A - B)) \div D$$

Y = Additional Intermediate Housing requirement (Habitable Rooms)

$$Y = ((E * G) \div (A - C)) \div D$$

Where:

A = Average Market Housing Value (£ per m<sup>2</sup>)

B = Average Low Cost Rent Housing Value (£ per m<sup>2</sup>)

C = Average Intermediate Housing Value (£ per m<sup>2</sup>)

D = Average Habitable Room size for the Development being 12 m<sup>2</sup>

E = Surplus profit available for Additional Affordable Housing Units as determined in Formula 1a (£)

F = 80%, being the percentage of surplus profit available for Additional Affordable Housing Units to be used for London Affordable Rented Housing

G = 20%, being the percentage of surplus profit available for Additional Affordable Housing Units to be used for Intermediate Housing

**Notes**

(A – B) represents the difference in average value of market housing per m<sup>2</sup> and average value of London

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	<p>Affordable Rented Housing per m<sup>2</sup> (£).</p> <p>(A – C) represents the difference in average value of market housing and average value of Intermediate Housing per m<sup>2</sup> (£).</p> <p>(E * F) represents the surplus profit to be used for London Affordable Rented Housing (£).</p> <p>(E * G) represents the surplus profit to be used for Intermediate Housing (£).</p> <p><math>(E * F) \div (A - B)</math> represents the additional London Affordable Rented Housing requirement (m<sup>2</sup>).</p> <p><math>(E * G) \div (A - C)</math> represents the additional Intermediate Housing requirement (m<sup>2</sup>).</p>
<p><b>Second Review Surplus</b></p>	<p>Formula 3:</p> <p>X = Late Stage Review Contribution</p> $X = (((A + B) - C) - ((D + E) - F) - P) \times 0.6 - \text{£}851,914$ <p>A = GDV achieved on sale/ lease of 75 per cent of residential units and GDV from other parts of the development sold / let and other income receipts (£)</p> <p>B = Estimated GDV for parts of the development that are yet to be sold/ let and other income sources (£)</p> <p>C = Base GDV determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)</p> <p>D = Build costs incurred at the time of review (£)</p> <p>E = Estimated build costs for remainder of the development (£)</p> <p>F = The Base Build Costs determined as part of the assessment of viability at the time planning permission was granted (or as determined in previous review) (£)</p> <p>P = <math>(A + B - C) * Y</math>; Developer profit on change in GDV (£)</p> <p>Y = Developer profit as a percentage of GDV as determined at the time planning permission was granted (%)</p>

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	<p>Notes: <math>(A + B) - C</math> = The change in GDV from the grant of planning permission (or previous review) to the late stage review (£) <math>(D + E) - F</math> = The change in build costs from the grant of planning permission (or previous review) to the late stage review (£)</p> <p><math>P</math> = Developer profit on change in GDV (£) 0.6 = Any surplus profit, after deducting the developer profit (<math>P</math>), will be shared between the LPA and the developer with 60 per cent used for additional affordable housing.</p>
<b>Viability Assessment</b>	means the calculation to be carried out in accordance with Formula 1a and Formula 2 for the purpose of the First Review Surplus and in accordance with Formula 3 for the purpose of the Second Review Surplus
<b>Surplus</b>	means as the case may be either a First Review Surplus identified by the First Review or a Second Review Surplus identified by the Second Review

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**The Owner the Developer and the Council each covenant with the other as follows:**

**First Review**

1. Subject to paragraph 2 below, on the First Review Date the Owner shall at its own cost and expense prepare in good faith the Viability Assessment, and (where there is a First Review Surplus) the Additional Affordable Housing Units Scheme together with the Calculations and deliver the same to the Council together with all financial and other information supporting the same.
2. If on the First Review Date the Owner shall have Commenced the Planning Permission the Owner shall not be obliged to prepare and deliver the Calculations to the Council and no Viability Assessment shall be required to be undertaken on the First Review Date PROVIDED ALWAYS THAT:
  - (a) if after the date hereof a third party shall have issued legal proceedings (by way of judicial review) to challenge the Planning Permission the Council and the Owner shall each use reasonable endeavours to agree an extension of time to the First Review Date which shall be reasonable in all the circumstances (regard being had to the extent to which the Owner shall have undertaken works pursuant to the Planning Permission) Provided Further That such extension of time shall not exceed a period equal to the difference in time between the date of the commencement of any such legal proceedings and the date of the final determination of the same (in circumstances where the Planning Permission remains extant and no further right of appeal is available) and the First Review Date shall be extended by a period equal to such extension of time agreed or otherwise determined); and/or
  - (b) where the Owner has satisfied all pre-commencement conditions on the Planning Permission so as to enable it to commence works of demolition and construction on the Land and is prevented from doing so by Force Majeure then the First Review Date shall be extended by a period equal to the period of time commencing on the date of the occurrence of the Force Majeure event and ending on the termination or cessation of that event (or such other time period as may be agreed between the Owner and the Council or otherwise determined).
3. Upon receiving a written request from the Council to provide further financial or other information in relation to the Calculations as the Council shall reasonably require (including in the case of any Market Unit or any Affordable Housing Unit details of the consideration contained in any contract exchanged for the disposal or grant of an interest in the same which has not been completed) the Owner shall promptly deliver the same to the Council.
4. On delivery of the Calculations to the Council on the First Review Date (where required) the Council and the Owner shall each use reasonable endeavours to agree the same (including the First Review Surplus (if any)) and, in the event of a First Review Surplus the Additional Affordable Housing Units Scheme.
5. If following the expiry of thirty (30) Working Days after the delivery of the Calculations the Council and the Owner have failed to agree the same including the matters referred to in paragraph 3 above then either the Owner or the Council may refer any difference or dispute between them for determination in the manner provided in clause 18.
6. If following the First Review Date the Council agrees the Calculations or the same are determined in the manner provided in clause 18 and in either case the Calculations determine a First Review Surplus then the Owner shall provide the Additional

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Affordable Housing Units in accordance with the Additional Affordable Housing Units Scheme.

7. The fees and costs of any independent valuer appointed by the Council to assess the Calculations and advise the Council upon the same shall be paid by the Owner to the Council within fifteen (15) Working Days of a written demand.

### **Second Review**

8. On the Second Review Date the Owner shall at its own cost and expense prepare in good faith the Viability Assessment, together with the Calculations required to determine the Second Review Surplus and deliver the same to the Council together with all financial and other information supporting the same
9. Upon receiving a written request from the Council to provide further financial or other information in relation to the Viability Assessment as the Council shall reasonably require (including in the case of any Market Unit or any Affordable Housing Unit details of the consideration contained in any contract exchanged for the disposal or grant of an interest in the same which has not been completed) the Owner shall promptly deliver the same to the Council.
10. On delivery of the Calculations to the Council on the Second Review Date the Council and the Owner shall each use reasonable endeavours to agree the same (including the Second Review Surplus (if any) and, in the event of a Surplus the Affordable Housing Contribution.
11. If following the expiry of thirty (30) Working Days after the delivery of the Calculations to the Council the Council and the Owner have failed to agree the same including the matters referred to in paragraph 9 above then either the Owner or the Council may refer any difference or dispute between them for determination in the manner provided in clause 18.
12. If following the Second Review Date the Council agrees the Calculations or the same are determined in the manner provided in clause 18 and in either case the Calculations determine a Second Review Surplus then within twenty (20) Working Days of the Second Review Agreement Date the Owner shall pay the Affordable Housing Contribution to the Council and the Council shall apply and appropriate the Affordable Housing Contribution for affordable housing purposes in accordance with the Council's adopted affordable housing policies and plans.
13. The fees and costs of any independent valuer appointed by the Council to assess the Calculations and advise the Council upon the same shall be paid by the Owner to the Council within fifteen (15) Working Days of a written demand.

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THE COMMON SEAL of the MAYOR )  
AND BURGESSES )  
OF THE LONDON BOROUGH OF )  
RICHMOND UPON THAMES was hereunto affixed  
in the presence of: [REDACTED] )



*LUCY CRAIG*  
Assistant Head of Law  
Authorised Officer

Seal Registration Number 28392104

EXECUTED AS A DEED BY )  
LINDEN HILL-CAPITAL HOMES-KUPG PROP LIMITED )  
acting by a director )  
In the presence of: [REDACTED]

Signature of Director: [REDACTED]

Signature of witness: [REDACTED]

Name (in BLOCK CAPITALS): *PETER ARKENTON*

Address: *75 KILBURN LANE, LONDON, W10 4BB*

*lc. WA*